

JUDGE SULLIVAN

09 CV 10340

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ETAGZ, INC.,

Plaintiff,

v.

SHAPE MEDIA, LLC, a New York :
Limited liability company, and :
TUMI, INC., a New Jersey :
Corporation, :

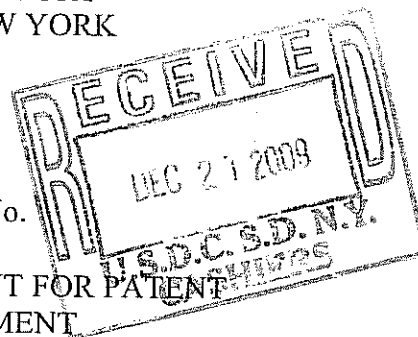
Defendant. X

Civil Case No.

COMPLAINT FOR PATENT
INFRINGEMENT

ECF CASE

JURY TRIAL DEMANDED



COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Etagz, Inc. ("Etagz"), by and through its attorneys, complains of
Defendant, Shape Media, LLC, ("Shape"), and Tumi, Inc., ("Tumi") as follows:

PARTIES, JURISDICTION AND VENUE

1. This is a claim for patent infringement that arises under the patent laws of the United States, including 35 U.S.C. § 281. This Court has exclusive subject matter jurisdiction under 28 U.S.C. § 1338.
2. Etagz, Inc. is an Indiana corporation, with its principal place of business in Provo, Utah.
3. Etagz, Inc. owns and has all right, title and interest, including standing to sue for past, present or future infringement, in the United States Patent No. 6,298,332 (the "332 Patent"), entitled "CD-Rom Product Label Apparatus and Method."

4. Shape Media is a New York limited liability company, with its principal place of business at 875 Avenue of the Americas, New York, New York.

5. Tumi, Inc. is a New Jersey corporation, with its headquarters at 1001 Durham Avenue, South Plainfield, New Jersey.

6. Etagz is informed and believes, and on the basis of that information and belief, alleges that Shape and Tumi have committed acts of infringement within this judicial district and both have regular and established places of business located in New York, New York, which is within this judicial district. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400.

PATENT INFRINGEMENT

7. Etagz incorporates by this reference as if fully set forth herein paragraphs 1 through 6 inclusive.

8. The '332 Patent relates to an apparatus and method for attaching a computer readable medium as a product label to merchandise at retail.

9. Etagz has complied with provisions of 35 U.S.C. § 287.

10. Despite notice and knowledge of the '332 Patent, Shape and Tumi have infringed and continue to infringe at least claims 1, 11, 16 and 26 of the '332 Patent. Among other things, Shape and Tumi have advertised, sold and offered to sell, and induced others to make, use and/or sell or offer to sell products and/ or services throughout the United States, including within this judicial district, that are covered by the claims of the '332 Patent.

11. Shape and Tumi's direct infringement has injured Etagz and Etagz is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty.

12. Shape and Tumi's infringing activities have injured and will continue to injure Etagz unless and until this Court enters an injunction prohibiting further infringement and, specifically, enjoining further infringement of the '332 Patent.

WHEREFORE, Plaintiff Etagz respectfully requests this Court to enter judgment against Shape and Tumi, and its subsidiaries and affiliates and all persons in active concert or participation with them, as follows:

- A. An entry of final judgment in favor of Etagz and against Shape and Tumi.
- B. An award of damages adequate to compensate Etagz for the infringement that has occurred, but in no event less than a reasonable royalty as permitted by 35 U.S.C. § 284, together with prejudgment interest from the date the infringement began;
- C. An injunction permanently prohibiting Shape and Tumi and all persons in active concert or participation with it, from further acts of infringement of the '332 Patent
- D. Increased damages as permitted under 35 U.S.C. § 284 for willful infringement;
- E. A finding that this case is exceptional and an award to Etagz of its reasonable attorneys' fees and costs as provided by 35 U.S.C. § 285.

F. Such other further relief that Etagz is entitled to under the law, and any other and further relief that this Court or a jury may deem just and proper.

TRIAL BY JURY DEMANDED

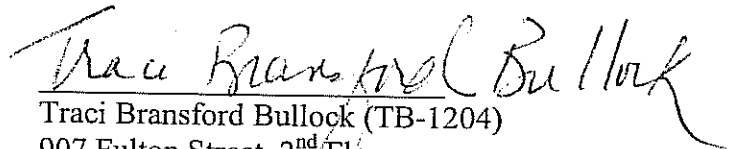
Etagz demands a trial by jury on all issues presented in this Complaint.

Dated: December 21, 2009

Respectfully submitted,

Traci Bransford Bullock, P.C.

By:



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